

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
HELENA DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

MAR 29 2005

ROBERT DANIEL MOORE,  
ADC #122001

JAMES W. MCCORMACK, CLERK  
By: *[Signature]*  
PLAINTIFF CLERK

v.

2:05CV00016HLJ

CORRECTIONAL MEDICAL  
SERVICES, INC., et al

DEFENDANT  
TS

PROPOSED FINDINGS & RECOMMENDATION

Plaintiff Moore, a state inmate incarcerated at the East Arkansas Regional Unit of the Arkansas Department of Correction (ADC), has been granted leave to proceed in forma pauperis in this lawsuit filed pursuant to 42 U.S.C. § 1983 (DE #3).


Pursuant to 28 U.S.C. §§ 1915A(a) and 1915A(b)(1),(2), the Court is required to screen complaints seeking relief against an officer or employee of a governmental entity, and must dismiss a complaint if the claims raised are legally frivolous, malicious, fail to state a claim or seek monetary relief from a defendant immune from such relief. The test for determining if an action is frivolous is whether the plaintiff can make a rational argument on the facts or law in support of his claim. The term "frivolous" refers to the "inarguable legal conclusion" and the "fanciful factual allegation." Neitzke v. Williams, 490 U.S. § 319 (1989). In addition, a complaint or portion thereof should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

Having reviewed plaintiff's complaint, the Court finds that defendant Arkansas Department of Correction must be dismissed. The ADC is an agency of the State of Arkansas, and therefore,

is protected from § 1983 liability by Eleventh Amendment immunity. See Glick v. Henderson, 855 F.2d 536 (8<sup>th</sup> Cir. 1988). In addition, the Court finds that defendant Correctional Medical Services, Inc. (CMS) must be dismissed for failure to state a claim. Plaintiff does not include any allegations in his original or amended complaints against CMS. Accordingly,

IT IS, THEREFORE, ORDERED that defendants Arkansas Department of Correction and Correctional Medical Services, Inc. are hereby DISMISSED from plaintiff's complaint.

IT IS SO ORDERED this 28<sup>th</sup> day of March, 2005.

  
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United States Magistrate Judge

THIS DOCUMENT ENTERED ON  
DOCKET SHEET IN COMPLIANCE  
WITH RULE 58 AND/OR 79(a) FRCP  
ON 3/30/05 BY CP